



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
STANLEY "SKIP" PRUSS, DIRECTOR

KEN ROSS
COMMISSIONER

BILL ANALYSIS

BILL NUMBER: House Bill 5020, as introduced
TOPIC: Breach of "Good Faith" in Settlement of Insurance Claims
SPONSOR: Representative Mary Valentine
CO-SPONSORS: Representatives Roberts, Slavens, Haugh, Haase, Liss, Kennedy, Huckleberry, Lisa Brown, Scripps, Robert Jones, and Barnett
COMMITTEE: Insurance
Analysis Done: July 10, 2009

POSITION

The Office of Financial and Insurance Regulation (OFIR) supports this legislation.

PROBLEM/BACKGROUND

Currently, if a person is found to have engaged in methods of competition or unfair or deceptive acts or practices that are prohibited by Sections 2001 to 2050 of the Code, the Commissioner may order: (a) payment of a monetary penalty, (b) suspension or revocation of the person's license or certificate of authority, or (c) refund of any overcharges. Unfair or deceptive acts or practices include failing to attempt in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. However, there is no private cause of action under these provisions whereby a claimant could recover damages, court costs and attorney fees against an insurer who fails to negotiate and settle an insurance claim in good faith. Some believe that establishing such a cause of action and providing for specific damages would eliminate what they see as lack of good faith.

DESCRIPTION OF BILL

The proposed legislation would add Section 2203 to the Uniform Trade Practices Act within the Michigan Insurance Code. This new section provides that, in addition to any other remedies, a claimant might also recover compensatory, consequential and exemplary damages should a property and casualty insurer fail to negotiate and settle an insurance claim in good faith.

SUMMARY OF ARGUMENTS

Pro

An insurer should have to pay the court and attorney fees incurred by a claimant in instances where it has been found to have failed to settle an insurance claim in good faith. When individuals go to court to seek remedy against insurance companies who do not settle their claims in good faith, the costs associated often far outweigh the amount they may receive in a judgment if they win the case. The costs often discourage individuals from pursuing action against the insurer, even if they have been treated unfairly. The availability of exemplary damages for individual claimants would act as a deterrent and encourage insurers to settle claims in good faith.

Con

With limited exceptions, legal principles hold that damages are generally limited to the monetary value of the contract. Courts have held that exemplary damages are compensatory and not punitive.

Holding insurers to a different standard in breach of contract actions encourages the filing of lawsuits in the event a claimant is dissatisfied with an insurer's response to a claim. This could have a significant impact on rates if it has the effect of encouraging insurers to pay claims which they believe are not covered or pay higher amounts than they believe are justified in order to avoid expensive, time-consuming litigation.

FISCAL/ECONOMIC IMPACT

OFIR has identified the following revenue or budgetary implications in this bill:

(a) To the Office of Financial and Insurance Regulation: None

Budgetary:

Revenue:

Comments:

(b) To the Department of Energy, Labor & Economic Growth: None

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan: None

Budgetary:

Revenue:

Comments:

(d) To Local Governments within this State: None

Comments:

OTHER STATE DEPARTMENTS

None.

ANY OTHER PERTINENT INFORMATION

This proposed legislation is similar to legislation that has been introduced in previous and current legislative sessions.

ADMINISTRATIVE RULES IMPACT

House Bill 5020 would add Section 2203 to the Michigan Insurance Code. OFIR has general rulemaking authority under the Insurance Code, 1956 PA 218.



Ken Ross
Commissioner

7-13-09

Date

